

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JUMAR S. ALEXANDER,

Defendant-Appellee.

UNPUBLISHED

May 15, 2012

No. 302487

Wayne Circuit Court

LC No. 10-010664-AR

Before: K. F. KELLY, P.J., and WILDER and BOONSTRA, JJ.

PER CURIAM.

The prosecution appeals by leave granted¹ the circuit court's order affirming the district court's order to dismiss the charges against defendant. We reverse and remand to the district court to reinstate the charges against defendant, and to bind defendant over for trial as charged.

Following a preliminary examination, the district court denied the prosecution's request to bind defendant over for trial on charges of open murder, MCL 750.318, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and dismissed the case without prejudice. The prosecution appealed the dismissal to the circuit court, which affirmed the district court's order of dismissal. The prosecution appeals by leave granted and argues that the district court abused its discretion when it did not bind defendant over for trial. We agree.

When the factual sufficiency of the evidence is at issue, this Court reviews a district court's decision to bind over a defendant for an abuse of discretion. *People v Flick*, 487 Mich 1, 9; 790 NW2d 295 (2010). A court abuses its discretion "when its decision falls 'outside the range of principled outcomes.'" *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010), citing *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008). Because the legal issue before this Court is whether the district court abused its discretion, the circuit court's decision is given no deference. *People v Harlan*, 258 Mich App 137, 145; 669 NW2d 872 (2003). The district court's factual determinations are reviewed for clear error. MCR 2.613(C). Therefore,

¹ *People v Alexander*, unpublished order of the Court of Appeals, entered October 20, 2011 (Docket No. 302487).

such determinations should only be disturbed if this Court is left with “a definite and firm conviction that a mistake was made.” *People v Brown*, 279 Mich App 116, 127; 755 NW2d 664 (2008).

A defendant is bound over for trial after the preliminary examination if the district court determines a felony has been committed and there is probable cause to believe that the defendant committed it. MCL 766.13; *People v Yost*, 468 Mich 122, 125-126; 659 NW2d 604 (2003). “This probable cause standard is not a very demanding threshold.” *Harlan*, 258 Mich App at 145. Probable cause exists when there is evidence “sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief” of the accused’s guilt on each element of the crime charged.” *People v Yamat*, 475 Mich 49, 52; 714 NW2d 335 (2006), citing *Yost*, 468 Mich at 126. To establish probable cause that a crime has been committed, “the prosecution need not prove every element beyond a reasonable doubt, but must present some evidence of each element.” *People v Redden*, 290 Mich App 65, 84; 799 NW2d 184 (2010). The district court may use circumstantial evidence and make reasonable inferences when determining if probable cause exists. *Henderson*, 282 Mich App at 312; *People v Greene*, 255 Mich App 426, 444; 661 NW2d 616 (2003). The district court may bind over a defendant even if personally entertaining “some reservations” regarding his guilt. *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997).

A murder is essentially an intentional killing committed with malice and that is neither justified nor excused. *People v Mendoza*, 468 Mich 527, 538-540; 664 NW2d 685 (2003). The charge of open murder does not carry a specific degree of murder such that a defendant ultimately may be found guilty of first- or second-degree murder. MCL 750.318; *People v Watkins*, 247 Mich App 14, 20-21; 634 NW2d 370 (2001), aff’d 468 Mich 233 (2003). The prosecution was thus required to have presented evidence of (1) a death, (2) caused by an act of the defendant, (3) with malice and (4) without lawful justification or excuse. See generally MCL 750.317; *People v Smith*, 478 Mich 64, 70, 731 NW2d 411 (2007). The record before this Court reflects that no lawful justification or excuse was presented for the victim’s, Grady Jeffries’, death. The fact that Jeffries was shot with a deadly weapon supports a finding of malice sufficient for a preliminary examination. *People v Bulls*, 262 Mich App 618, 627; 687 NW2d 159 (2004). The issue thus becomes whether the prosecution provided sufficient evidence that defendant was the person who shot Jeffries.

Testimony was presented that Jeffries attended a cabaret along with 200 or 300 others, and then left in the back seat of Andre Vaughn’s green Tahoe. Jeffries allegedly had flirted with Choya Scott’s girlfriend at that party. Testimony also was presented that Vaughn nearly hit a black Marauder while leaving the VFW parking lot. The Marauder, driven by defendant with Scott as a passenger, then followed Vaughn’s truck. After a few minutes, gunshots rang out. Jeffries was hit in the head and died.

Taylor’s testimony established that defendant and his passengers then returned to the VFW parking lot. The passengers got out and ran. Defendant admitted that they had sent some warning shots toward the green truck. One week later, in the basement of a friend’s house, Taylor heard defendant say, “I didn’t mean to do that,” say that he needed to switch cars so the police could not connect his vehicle to the crime, and say that he planned to dispose of his gun, or report it stolen, because it was registered in his name. Defendant also motioned with his left

arm fully extended, his right arm up in support, to show how he had shot his gun. Taylor's testimony therefore supports a finding that defendant shot Jeffries.

However, the district court decided that Taylor was not credible. The court appeared to base its determination on the following: (1) Taylor was the only eyewitness presented to testify, out of a crowd of 200-300 people in attendance at the cabaret, who tied defendant to the shooting, (2) several years had elapsed since the incident occurred, (3) there was no video evidence produced despite the presence of surveillance cameras, and (4) there was conflicting testimony from the witnesses as to whether, *e.g.*, the vehicle containing the victim had turned left or right when leaving the parking lot, whether there had been an altercation between occupants of the green truck and black Marauder, and the reason(s) why Taylor had not come forward sooner.

In determining whether to bind over a defendant for trial, the district court "has not only the right, but the duty, to pass judgment on the credibility of the witnesses." *Yost*, 468 Mich at 127-128. However, a defendant should be bound over for trial even when the evidence presented at the preliminary examination conflicts or raises reasonable doubt of the defendant's guilt, so that the jury can decide these questions of fact at trial. See *id*; *Redden*, 290 Mich App at 84. In other words, a district court may weigh whether a witness is credible, *People v Coons*, 158 Mich App 735, 738; 405 NW2d 153 (1987), but may not usurp the role of the jury. *People v Northey*, 231 Mich App 568, 575; 591 NW2d 227 (1998). Where the evidence conflicts or raises a reasonable doubt as to guilt, the magistrate may not discharge the accused; that question is for the jury. *Coons*, 158 Mich App at 738.

The district court's refusal to bind defendant over for trial was based exclusively on its determination that Darrell Taylor's preliminary examination testimony completely lacked credibility. We conclude that the district court's decision constituted clear error. A review of Taylor's testimony leaves this Court with a definite and firm conviction that the district court erred in finding Taylor's testimony incredible. See *Brown*, 279 Mich App at 127.

This Court recognizes that the district court had the unique opportunity to view Taylor's demeanor while he testified, including his body language, tone, physical appearance, expressions, and other behavior. This Court recognizes that the district court's "opportunity to hear the witness[[]] and its consequent unique qualification to assess credibility" is entitled to deference. *In Re Leone Estate*, 168 Mich App 321, 324; 423 NW2d 652 (1988). However, in the context of bind-over, we must keep in mind the tension that exists between the magistrate's duty to "pass judgment on the credibility of the witnesses," and his duty to bind a defendant over even when the evidence conflicts. See *Yost*, 468 Mich at 128 n 8. A magistrate need not be free from doubt regarding guilt to bind-over a defendant. *Id.* at 126. This is because "the gap between probable cause and guilt beyond a reasonable doubt is broad and finding guilty beyond a reasonable doubt is the province of the jury." *Id.*, citations omitted.

The prosecution does not have to present its entire case, but in effect must only present a prima facie case, at a preliminary examination. *Harlan*, 258 Mich App at 146. A prima facie case "means and means no more than evidence sufficient to justify, but not to compel, an inference of liability, if the jury so find." *People v Stewart*, 397 Mich 1, 6 n 1; 242 NW2d 760, on rehearing 400 Mich 540; 256 NW2d 31 (1977), superseded in part on other grounds by

People v Robideau, 419 Mich 458; 355 NW2d 592 (1984). Thus, the fact that the prosecution did not present additional eyewitnesses or video evidence at the preliminary examination was not dispositive of a lack of probable cause to bind over defendant. While it would have been helpful if the prosecution had produced more evidence to tie defendant to the murder, the prosecution did not need to provide proof beyond a reasonable doubt. Rather, the prosecution need only produce evidence constituting probable cause for the court to believe that a felony was committed and the defendant committed that felony. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000).

Although Taylor's testimony may have contained inconsistencies, we conclude that Taylor's testimony presented questions of fact that the district court improperly decided when it refused to bind over defendant. Where the record contains credible evidence both supporting and negating the elements of the crime, a jury must decide the resulting questions of fact. *People v Grayer*, 235 Mich App 737, 744 n 3; 599 NW2d 527 (1999); *People v King*, 412 Mich 145, 153-43; 312 NW2d 629 (1981); *Coons*, 158 Mich App at 738; *Northey*, 231 Mich App at 575. The arguable conflicts in Taylor's testimony concerning whether someone had yelled from defendant's vehicle following the parking lot encounter, or the reason behind the shooting, should have been decided by the jury. Additionally, although Taylor waited several months to come forward, that delay is to be weighed by the trier of fact and is not a basis to refuse a bind-over. Similarly, Taylor's confusion as to the date he first went to the police or gave a written statement did not render his testimony as to events he witnessed incredible for purposes of a preliminary examination.

Although the district court may have entertained reasonable doubt that defendant committed the crime, these doubts were not a sufficient basis for binding defendant over for trial. *Yost*, 468 Mich at 133-134. This is not to say that a fact-finder necessarily will be convinced that Taylor's testimony is creditable, but rather that his testimony sufficed to cause a reasonable person to entertain the belief that defendant committed the crime. *Yamat*, 475 Mich at 52. No more is required at the bind-over stage.

Reversed and remanded to the district court for entry of an order reinstating the charges against defendant and binding defendant over for trial as charged. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Mark T. Boonstra